STATE OF DELAWARE
DEPARTMENT OF FINANCE
DIVISION OF REVENUE
DELAWARE STATE BUILDING
820 N. FRENCH STREET
WILMINGTON, DELAWARE 19801

State of Delaware
Division of Revenue

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TECHNICAL INFORMATION MEMORANDUM - 83-4

Summary of Significant Delaware Tax Case Decisions by Tax Appeal Board and Appellate Courts - 1982/1983

1. Thomas E. Manerchia v. Director of Revenue, Delaware Tax Appeal Board, Dkt. No. 769, September 10, 1982.

Personal Income-Credits Against State Tax - Extent of Credit. - The taxpayer properly claimed a credit for the entire tax paid to New Jersey on the gain realized from the sale of real estate there, even though only 40% of that gain was reported as income taxable by Delaware. The Director had argued that only that percentage of the tax paid to New Jersey on income subject to Delaware taxation should be allowed as a credit against Delaware taxes. The statutory provision, however, allowed a credit for "any income tax imposed" by another state. Thus, the fact that 60% of the gain did not enter into Delaware income calculations as a result of Delaware adoption of the Federal rule on long-term capital gains had no bearing on the application of the credit. Accordingly, the taxpayer's position in taking the full credit was affirmed. 30 Del. C., §1111 (a). The case was not appealed.

2. Robert W. & Phyllis M. Wynn v. Director of Revenue, Delaware Tax Appeal Board, Dkt. No. 771, September 10, 1982.

Personal Income - Credits Against Tax - Income Tax Imposed by Another State - Definition of "Imposed." - A credit for income tax imposed by another state was denied for Pennsylvania income taxes withheld from a Delaware resident's salary. The employer had withheld the tax in the erroeneous belief that the taxpayer had worked at the company's Pennsylvania location rather than at the company's Delaware location. The tax was not "imposed" on the taxpayer by its merely having been withheld since the Pennsylvania tax liability was actually zero dollars, as evidenced by the taxpayer's Pennsylvania tax return. The fact that the taxpayer was denied the use of the withheld funds was due entirely to the error of his employer and was not an imposition of tax. Accordingly, the taxpayer's petition was denied and the credit was disallowed. 30 Del. C., §1111 (a). No appeal was filed.

3. Aaron Wilson, Jr. and Sallie J. Wilson v. Director of Revenue, Delaware Superior Court, Dkt. No. 82A-JN-3, December 23, 1982, affirming decision of the Delaware Tax Appeal Board.

Personal Income - Limitations - Additions to Tax - Failure to File. -

The Tax Appeal Board properly found that taxpayers who had failed to file income tax returns for the years 1974 through 1978, were subject to penalties. Ignorance of their obligation to file was not "reasonable cause" for their failure to file, notwithstanding their having filed and paid taxes in Pennsylvania, where they worked. The taxpayers' argument that the three-year statute of limitations was a bar to assessments for the years 1974 through 1976 since " intent to evade the tax" was not proven, failed because their interpretation did not comport with the intent of the General Assembly. Only a false or fraudulent return required proof of intent to evade in order to escape the three-year limitation. The time limitation did not apply to complete failure to file. Accordingly, the Tax Appeal Board's decision, sustaining the Director of Revenue, was affirmed. §1191 (a) (b) and §1194 (a), 30 Del. C.

The case was appealed by taxpayer to the Supreme Court but later withdrawn.

4. Rublee C. Soule v. Director of Revenue, Delaware Tax Appeal Board, Dkt. No. 774, March 11, 1983.

Personal Income - Limitations of Time - Deficiency Notice - Extension by Agreement - Failure to Notify. - The taxpayer's failure to notify the Division of Revenue within 30 days of an agreement to extend the period of assessment of Federal income tax resulted in the tolling of the statute of limitations with respect to the 1975 tax year. The argument that they were not obligated to notify the Secretary was contrary to the statute they relied on for their defense and was found to be without merit. Accordingly, the determination of the Director of Revenue was sustained. 30 Del. C., §1176, §1191. No appeal was filed.

5. Richard Brown, t/a Dick's Esso v. Director of Revenue, Superior Court, 82A-SE-10 (1983)

The Court held that the collection of the tax provided in 30 Del. C., §2905 does not violate §1, Art. 8 of the Delaware constitution and that interest may be suspended only in connection with the suspension of taxes. The Court remanded the case to the Board to determine if there should be a suspension of penalty.

6. Schulderberg-Kurdle Co., Inc. v. Director of Revenue, Superior Court, 82 A-AP-1 (1983).

Affirmed Tax Appeal Board decision (Dkt. No. 618) which held that taxpayer was "engaged in business" within the meaning of 30 Del. C., §2903, relating to wholesaler's license tax. The Court also held that the activities of the taxpayer in Delaware were sufficient to establish nexus for license tax purposes.

7. Cluett, Peabody & Co., Inc. v. Director of Revenue, Delaware Tax Appeal Board, Dkt. No. 755, May 13, 1983.

Corporate Income - Net Income Defined - Entire Net Income - Loss Carryover of Merged Subsidiary. - A corporation was not entitled to report and deduct a loss carryover from a subsidiary with which it merged because the corporation previously had utilized the losses of the subsidiary on its consolidated Federal income tax return. For several years, the corporation filed consolidated Federal income tax returns which included the income and losses of its qualifying subsidiary corporations as members of an affiliated group of corporations. On December 31, 1977, the corporation merged with one of its subsidiarires resulting in the complete liquidation of the subsidiary. One of the consequences of the merger was that as of the date of the subsidary's liquidation, the corporation would have been entitled to succeed and take into account any of the subsidiary's net operating loss carryover in determining the corporation's Federal taxable income. However, as a result of filing the Federal consolidated return, the subsidiary's net operating losses from 1973 through 1975 were fully utilized by the corporation. Therefore, the subsidiary did not have any net operating loss carryover for Federal income tax purposes. Accordingly, the decision of the Director of Revenue was affirmed. §1903 (a), Del. Code; §381 (a) (1), 381 (c) (1), I.R.C. This case is on appeal to the Delaware Superior Court.

Robert W. Chastant
Director of Revenue

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